



Policy Title: Contingent Worker Policy (i.e., Personal Services Independent Contractors and Consultants)

Policy Number:

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Responsible Executive:

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Responsible Office: Human Resources

Contingent Worker Policy (i.e., Personal Services Independent Contractors / Consultants)

Policy Statement

Baylor University (“Baylor”) is committed to properly classifying workers who perform work for Baylor. Once a decision has been made to utilize the services of an independent contractor, consultant, or temporary worker (collectively, “contingent workers”), Baylor and the contingent worker (or a third-party vendor) must enter into a mutually acceptable contract in accordance with procedures and processes related to procuring such services.

Reason for the Policy

Departments may engage the services of individuals or companies who are not employees of Baylor for service contracts such as consulting or short-term projects. This policy and checklist will provide faculty and staff with a step-by-step process for reviewing and engaging contingent workers.

Individuals/Entities Affected by this Policy

This policy applies to all Baylor faculty and staff who engage, manage, or work with a contingent worker.

Exclusions

- Volunteers
- Students
- Individuals engaging in activities addressed by Honorarium or Limited Engagement Fees
- Visiting faculty employed by other universities and with whom Baylor has an agreement with their host institution

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- Third Party Agency contracts. Although this policy does not govern details of engaging such contractors, the factors listed below under “Classification” which discuss how to engage with non-employees performing work for Baylor are applicable to the employees of such contractors.

Related Documents and Forms

University Policies and Documents

Baylor Procurement Services Contract Review and Approval Process (“TCM”)
 Baylor Contract Administration Manual

Forms and Tools

Forms and tools are available at <https://www.baylor.edu/procurement/index.php?id=930077>
 Independent Contractor Classification Checklist
 Contract Templates and Forms

Definitions

These definitions apply to terms as they are used in this policy.

Consultant	A type of Contingent Worker, specifically, a non-employee who has a “special skill” that is not present within Baylor. Consultants typically provide: 1) work performed that is strategic in nature and relates to business strategy, processes, information systems, or organizational structure or 2) professional services such as audit, legal, tax, or training services. A consultant, like all Contingent Workers, is not subject to Baylor’s supervisory control in the manner and means of performing the services he or she is contracted to provide. The work of a Consultant may be performed on or off-site. Consultants may only be retained under a written agreement, which must be reviewed and approved by the Office of General Counsel (“OGC”). For greater clarity, professional services firms Baylor uses to provide it with advice, counsel, or representation in the ordinary course of business (e.g., outside law firms) are not considered Consultants under this policy.
Contingent Worker	A Contingent Worker typically performs work on and until the completion of a specific project or under a specific scope of work. For the purposes of this policy, a Contingent Worker is not paid by Baylor as an employee, temporary or otherwise. Rather, a Contingent Worker is an individual who provides personal services to Baylor and whose pay would be reported on a IRS Form 1099 (and not a W-2). Types of Contingent Workers include independent contractors and consultants, as defined herein.
Contract Authority	Individuals who have authority delegated in writing from a currently effective Board of Regents Resolution or from the President to bind Baylor or its subunits.
Contract	A legally binding agreement consisting of promises to perform, and imposing duties on the parties to perform as promised. A party may be in breach of the contract if it fails to perform. A breach of the contract may entitle the other party to a legal remedy.
Employee (Regular and Part-Time)	For the purposes of this policy, an employee is a person who is hired through Human Resources and whose pay should be reported on a W-2 (and not a 1099). Workers are presumed to be employees of Baylor unless the relationship satisfies certain standards required for an independent contractor/consultant. In situations where there is not strong enough criteria to satisfy the classification of an individual as a contingent worker or independent contractor, Baylor will err on the side of the individual being an employee.

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Honorarium	A gratuitous payment of money or other thing of value to a person for the person's participation in a usual academic activity for which no fee is legally required. Honorarium payments are provided as a token of appreciation for participation in an activity or event, and not as a contractual obligation to pay for services rendered.
Independent Contractor	A type of Contingent Worker. Specifically, a non-employee who performs a service for Baylor, typically for a set period, on a project basis, pursuant to the terms of a written contractual agreement. An independent contractor is not subject to Baylor's supervisory control in the manner and means of performing the services he or she is contracted to provide. Independent contractors will perform services pursuant to the terms and conditions contained in Baylor's standard contractor agreement. Independent contractors typically invoice Baylor for their services and are responsible for all of their own business expenses. Former employees generally may not be hired as independent contractors, particularly when the period between termination of their employment and their retention as contractors is short. The Human Resources department must be consulted on all uses of contractors and will refer to the Office of General Counsel as appropriate.
Letter of Retainer	A form of contract used only to hire outside legal counsel.
Limited Engagement Fee	A payment to an individual for providing a service of an academic nature, for a short duration, and/or low dollar amount (\$1,000 or less per transaction, up to \$5,000 per calendar year). This is intended for guest speakers, guest lecturers, artists, performers, writers/editors, board members, critics, preceptors, mentors, and/or those services meeting the fee guidelines.
Outside Counsel	A private law firm, attorney, or paraprofessional who is not employed in the OGC and is providing legal services to any Baylor personnel on behalf of Baylor.
Third Party Agency Employee	Employees of a company with whom Baylor has contracted for the performance of work, such as those employed by a temporary agency and with whom Baylor has contracted for such services; or individuals employed by a corporation with whom Baylor has contracted to provide services on its behalf.

Contacts

Contact	Telephone	Office email/web site
Procurement Services	254-710-1561	https://www.baylor.edu/procurement/
Human Resources Department	254-710-2000	https://www.baylor.edu/hr/
Office of General Counsel	254-710-3821	http://www.baylor.edu/ogc/index.php

Responsibilities

Accounts Payable	Provides support to work authorization questions (e.g., visa), reviews contracts, and makes payments under the terms of contracts.
Contract Manager (Contract Administrator)	The departmental employee who reviews contract requests submitted by department members. The Contract Manager ensures Human Resources signs off on the correct classification. If the contract is approved, the Contract Manager processes the contract in accordance with Procurement Services requirements.
Employees	Complies with Baylor processes and policies prior to requesting an individual to perform work for Baylor.

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Human Resources	Responsible for determining whether the individual should be engaged as an employee, managed through third party agency (i.e., temporary staffing agency), or contracted as an independent contractor / consultant. Human Resources is responsible for communicating the classification decision to the individual who requested the personal services contract to be reviewed.
Office of General Counsel	Provides support to the classification decision, work authorization (e.g., visa questions), reviews contracts, and makes the final decision concerning retaining outside legal counsel.
Procurement Services	Responsible for the contract review, approval, and execution process, generally accomplished through TCM. Responsible for the requisitioning and ordering process.

Principles

A person who is performing work for Baylor for payment may be hired as an Employee, contracted with as a Contingent Worker, or under the employment of a Third-Party Agency. There are significant and far-reaching consequences associated with the proper classification of individuals who perform services for Baylor, such as taxes, wages, benefits, and other legal matters.

The characterization of an Employee or Contingent Worker must be clearly determined before any contract is entered or any services are rendered.

Only individuals authorized to work in the United States may be utilized by Baylor for employment and/or to render services as a Contingent Worker. Visa verification is required prior to contracting with an individual. It is the responsibility of the prospective contractor/consultant to obtain and maintain authorization to work.

Once a decision has been made to utilize the services of an individual or company as a Contingent Worker, Baylor and the Contingent Worker must enter into a mutually acceptable contract.

Contracts must be in writing and reviewed by the appropriate offices prior to the engagement of contract services. Proper contractual terms must be included in any contract. Only Contract Authorities may agree and enter into contracts.

The Purchasing Card may not be used to contract with, or pay for a Contingent Worker without prior written approval from the head of Accounts Payable.

Classification

General Classification – A Contingent Worker is generally an individual who performs work through independent employment, in pursuance of a contract by which he or she has control of the work and the manner of performance. Baylor does not withhold federal income tax from payments made to Contingent Workers. Additionally, Contingent

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Workers are not entitled to Baylor employee benefits, and are not covered by Baylor's workers' compensation policy.

Baylor will not provide the following to any Contingent Worker:

- Business cards
- Personalized letterhead/stationary
- Credit cards
- Name plates
- Letters of recommendation
- Email addresses that mirror the format for Baylor employees

The following will be handled by the Contingent Worker's employer or by the Contingent Worker on his or her own behalf, and not by Baylor (although Baylor may enforce terms of the contract):

- The initial screening and employment verification (as applicable)
- All payroll matters, including tax withholdings
- Performance appraisals, pay rate discussions, and employee benefits
- Maintenance of employment files
- Disciplinary actions
- Termination of an assignment
- EEO filings
- Recognition programs
- Training (training should only be provided if the skill required is unique to Baylor)
- Travel expenses (under limited circumstances, these may be addressed in the contract)

In addition, when interacting with Contingent Workers' managers, when applicable, Baylor may not:

- Discuss pay rates, increases, or bonuses
- Provide exclusive work direction, dictate hours of work, authorize or assign overtime, or "approve" time off (temporary workers will receive instructions from the Third-Party Agency). The written agency/vendor agreements govern the assignment.
- Issue departmental keys or card swipe access
- Discuss opportunities for regular employment
- Provide reimbursement for business expenses
- Conduct performance reviews or provide written performance feedback
- Discipline or "terminate" a contingent worker, (but may request that the vendor no longer provide a particular individual to Baylor). Baylor may also prohibit a particular individual from entering Baylor's private property.
- Allow Contingent Workers to use perks only otherwise available to Baylor employees
- Include Contingent Workers in meetings and discussions unrelated to their assignment
- Give personal references

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When considering classification, HR will consider items in the attached Independent Contractor Classification Checklist.

Special Considerations

Honorariums and limited engagements – Individuals appearing on a limited engagement as a representative and/or on behalf of Baylor may be considered an employee by the IRS or other federal or state agencies if the person has been given specific instructions and/or if the person is held out as an employee of Baylor. As such, the same considerations provided to other individuals providing services to Baylor should be evaluated here.

Equipment – Baylor may supply a desktop computer, telephone, or other equipment for use by the Contingent Worker only where Baylor requires that Baylor-owned equipment be used to access Baylor systems or where such equipment is necessary for the Contingent Worker to carry out the functions for which he or she has been engaged (e.g., for use by a temporary receptionist). In all other cases, the Third-Party Agency, consulting firm, and/or Contingent Worker will be responsible for supplying the equipment necessary to perform the job for which they have been contracted.

Current Employees – All current Baylor employees must be treated as employees for all work performed for Baylor and may not also be paid as a Contingent Worker.

Former Employees – As a general rule, former or retired Baylor employees may not be retained as Contingent Workers in the same tax year as the employee's last year of employment. If the former employee is providing a service that is the same as or similar to that of a current employee, he or she must be paid as an employee and not as a Contingent Worker.

Those Performing Core University Functions – Generally, Baylor will treat individuals performing core university functions such as teaching, research, classes, seminars, academic coaches, advisors, and other classes of work similar to those performed by existing staff as employees and not Contingent Workers. Exceptions may be made for those performing in a limited engagement and if approved by HR.

Students – Students do not generally qualify to be treated as Contingent Workers.

Foreign Nationals – To ensure compliance with federal regulations, prior to contracting with a foreign national or nonresident alien for services, Baylor must ensure the individual is eligible to work in the U.S.

Out of State Contractors – Some states' classification tests are significantly more restrictive than that of Texas. In particular, California's supreme court has identified a restrictive test for classifying someone as an Independent Contractor. When considering retaining services from a Contingent Worker outside of Texas, it is extremely important to

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involve HR and, if appropriate, the Office of General Counsel before entering into any agreement or relationship with the Contingent Worker.

Outside of the U.S. – Services performed outside of the United States need additional review to ensure compliance with applicable international law.

Retaining Legal Counsel – All requests to retain Outside Counsel require review and written approval by the Office of General Counsel, given a variety of legal and professional legal ethics issues. The request for outside counsel should describe the requested legal services in sufficient detail.

Title IX - Contractors shall comply with law and Baylor policies relating to treatment of Baylor employees and students and their records (to include but not limited to the *Sex Discrimination, Sexual Violence, and Sexual Harassment Policy* (Title IX Policy), health and safety, firearms on campus, drug-free, alcohol-free, and smoke-free campus, and compliance with FERPA. Contractors are responsible for their own training for awareness of law and Baylor policies. Baylor policies are available through Procurement Services or online. This provision is not intended to direct the manner or means by which the Services are provided. If the Contractor believes a Baylor policy impedes the manner or means the Contractor performs the Services, the Contractor has an affirmative obligation to notify Procurement Services.

Procedures

1. Prior to entering into a contract for a Contingent Worker, the Contract Manager must obtain HR direction as to the appropriate classification of the worker.
2. In order to obtain HR classification, the Contract Manager fills out the Contingent Worker Classification Checklist and provides it and a detailed statement of desired work to HR.
3. HR will review and consult with other offices as appropriate.
4. HR will respond with either approval of the classification as a Contingent Worker, request more information, or disapprove classification as a Contingent Worker and discuss employment classification options.
5. For services performed by an individual classified as a Contingent Worker, the Contract Manager processes the contract in accordance with standard Procurement Services procedures. Baylor typically prefers the Contract Manager utilize contract templates provided by Baylor rather than those offered by the prospective Contractor. Contract Managers may contact Procurement Services and/or the Office of General Counsel for assistance in tailoring the forms for their particular situation.

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Questions

If you have questions about this policy or its application, please contact your HR representative.